

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANA ESCOFFIER,

Civil Action

Plaintiff,

Case No.:

-against-

WHOLE FOODS MARKET, et al., A-Z,

NOTICE OF REMOVAL

Defendant.

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Defendant, WHOLE FOODS MARKET GROUP, INC. i/s/h/a "WHOLE FOODS MARKET", by its attorneys, FISHMAN McINTYRE LEVINE SAMANSKY P.C., respectfully petitions the United States District Court, Southern District of New York, upon information and belief, as follows:

1. This case was originally commenced on or about May 16, 2022, in the Supreme Court of the State of New York, County of New York. The suit is identified in the Supreme Court as "*Dana Escoffier v. Whole Foods Market, et al., A-Z.*", Index No. 100516/2022. A true copy of plaintiff's Summons and Complaint are cumulatively annexed hereto as **Exhibit A**.

2. Defendant first received notice of the suit on or about July 7, 2022, when personal service was effectuated upon Whole Foods' employee, Jonathan Melgar, at the Whole Foods store location which forms the basis of plaintiff's Complaint. (See **Exhibit B** hereto).

3. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. § 1332, which allows this Court to hear matters based on diversity of citizenship of the parties.

4. In plaintiff's Complaint, plaintiff specifies a monetary sum of damages claimed in the amount of "\$350,000.00". See **Exhibit A**, para. 45.

5. Therefore, this Notice of Removal is being filed within 30 days of Whole Foods' receipt of plaintiff's written demand for damages as set forth in plaintiff's Complaint (served on July 7, 2022).

6. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs.

7. According to his Complaint, plaintiff (appearing *pro se* in this action) is a resident of the State of New York, specifically "New York, New York". (See **Exhibit A**, Summons at page 2; Complaint at para. 1).

8. Defendant, Whole Foods Market Group, Inc., is a foreign corporation, incorporated in the State of Delaware and having its principal place of business in Austin, Texas (see **Exhibit C**).

9. As touched on above, plaintiff is a citizen of the State of New York. Defendant, Whole Foods Market Group, Inc., is a foreign corporation, incorporated in a state other than New York, and having its principal place of business in a state other than New York. As such, this action is between plaintiff, a citizen of one state, and defendant, Whole Foods, a corporate citizen of a different state.

10. Based upon the foregoing, diversity of citizenship exists.

11. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446 (d), as evidenced in the annexed Certificate of Service.

WHEREFORE Petitioner, WHOLE FOODS MARKET GROUP, INC., defendant in the action described herein now pending the Supreme Court of the State of New York, County of New York, under Index No. 100516/2022, prays that this action be removed therefrom to this Honorable

Court.

Dated: New York, New York
August 3, 2022

Yours etc.,



MITCHELL B. LEVINE
FISHMAN McINTYRE LEVINE SAMANSKY P.C.
Attorneys for Defendant
WHOLE FOODS MARKET GROUP, INC.
521 Fifth Avenue, 17th Floor
New York, New York 10175
(212) 461-7190
File No.: WH-109

TO: Mr. Dana Escaoffier
Plaintiff – *Pro Se*
523 Hudson Street, Apt. 4FS
New York, New York 10014
(212) 675-3836